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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/094,505	06/10/98	KLIMA	W 100-168P-WLK
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QM02/0915

EXAMINER

MAUST, T

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 09/15/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/094,505

Applicant(s)

KLIMA ET AL.

Examiner

Timothy L. Maust

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-9,11-13,15,17-19 and 24-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3,5-9,11-13,15,17 and 24-27 is/are allowed.
- 6) ☒ Claim(s) 28-35 and 38-43 is/are rejected.
- 7) ☒ Claim(s) 36 and 37 is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "two filling tubes connected to at least one metering pump" in claim 28, line 5, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28 and 38-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connan in view of Hauser et al.

In regard to claims 28 and 41-43 (refer to Figures 5A-5F), the Connan reference discloses an "apparatus" (see Fig. 4) for filling a cartridge 12 having at least two compartments 22 and 24 for storing fluid, comprising at least one "fluid reservoir" (34 and 38), and at least two "filling tubes" (36 and 40) and a "holder" or "puck" 26 that is fixed from rotation (see col. 5, lines 19-40). Connan further discloses the supply of material being controlled by control unit 50 (see col. 4, lines 58-65), but is not explicit as to the fluid material being supplied by at least two "metering pumps" connected to the at

least one "reservoir". However, the Hauser et al. reference discloses another fluid filling apparatus (see Fig. 2) having "metering pumps" (6 and 6') connected to reservoirs (4 and 5) to control the amount of material delivered. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ metering pumps on the Connan device (if not already) as, for example, taught by Hauser et al. in order to control the amount of material delivered.

In regard to claims 38 and 40, Connan explicitly states in column 1, lines 23-26 that the invention is readily applicable to the filling of plural chamber containers having more than two chambers (i.e., 3 and 4 chambers) which would inherently include the necessary additional components.

In regard to claim 39, Connan inherently provides separate reservoirs, since two different materials are filled into the chambers of the tube (see col. 2, line 43-47).

Claims 29-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connan as applied to claim 28 above, and further in view of Tsutsumi et al.

Connan discloses the invention substantially as claimed including an indentation in the bottom surface of "puck" 26 to accept the "cap" 16 of the tube, but does not explicitly disclose the container being conveyed to the filling apparatus by a conveyor. However, the Tsutsumi et al. reference discloses another tube filling apparatus having holders A1 that are conveyed to the filling apparatus by conveyors C1-C8 and are guided by rails 590. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Connan device to have a

conveyor (if not already) having guide rails in view of the teachings of the Tsutsumi et al. reference in order to automatically supply containers to the filling apparatus in one continuous operation.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Allowable Subject Matter***

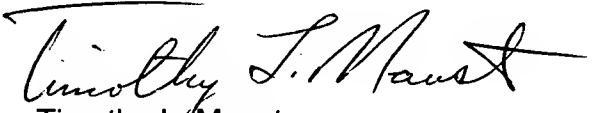
Claims 1-3, 5-9, 11-13, 15, 17-19 and 24-27 are allowed.

Claims 36 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Mon. - Thur. 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry J. Recla can be reached on (703) 308-1382. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7766 for regular communications and (703) 308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

  
Timothy L. Maust  
Examiner  
Art Unit 3751

tlm  
September 14, 2000